

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. **278**

THE UNITED STATES

vs.

THE MIDWEST OIL COMPANY ET AL.

FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

FILED NOVEMBER 10, 1913.

(23901.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 750.

THE UNITED STATES

vs.

THE MIDWEST OIL COMPANY ET AL.

FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, 1913, of said court, before the Honorable William C. Hook and the Honorable John E. Carland, circuit judges, and the Honorable Arba S. Van Valkenburgh, district judge.

Attest:

[SEAL.]

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.*

Be it remembered that heretofore, to wit, on the twenty-eighth day of June, A. D. 1913, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the United States of America is appellant and The Midwest Oil Company, et al., are appellees, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 [2] Pleas in the District Court of the United States for the District of Wyoming, sitting at Cheyenne.

Be it remembered that heretofore and on, to wit, the fourteenth day of February, in the year of our Lord one thousand nine hundred and thirteen (1913), came The United States of America and filed in said court its bill of complaint, and sued out and under the seal of said court a subpoena in chancery against The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed.

And said bill of complaint is in words and figures as follows, to wit:

[3] In the District Court of the United States for the District of Wyoming.

United States of America, plaintiff,

No. 733. vs. In Equity.

The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, defendants.

The United States of America brings this, its bill in equity, against The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, and thereupon complains and alleges:

I.

This suit is brought under the authority and by the direction of the Attorney General.

II.

The defendant, The Midwest Oil Company, is a corporation organized under the laws of the former Territory of Arizona, and now existing under the laws of the State of Arizona, and is a resident and citizen of that State.

The defendant, The Reed Investment Company, is a corporation organized and existing under the laws of the State of Colorado, and a resident and citizen of that State.

The defendant, The Fitzhugh Oil Company, is a corporation organized and existing under and by virtue of the laws of the State of Arizona, and is a resident and citizen of that State.

2 The defendants, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, are each and all residents and citizens of the State of Colorado, and their respective Christian names [4] are unknown to the plaintiff.

III.

The plaintiff now is, and ever since the Louisiana Purchase of 1803 has continuously been, the owner of certain land situate in the county of Natrona, in the State of Wyoming, and described as follows, to wit: The northeast quarter (NE. $\frac{1}{4}$) of section eleven (11) of township thirty-nine (39) north of range seventy-nine (79) west of the sixth principal meridian. The said land contains large and valuable deposits of petroleum and is chiefly valuable therefor; but no minerals of value, other than the said deposits of petroleum, have thus far been discovered within the said land.

IV.

On September 27, 1909, the Secretary of the Interior, acting in that behalf with the approval and pursuant to the direction of the President, duly and lawfully made and promulgated a certain order in writing, entitled "Temporary petroleum withdrawal number 5," whereby the said land, in common with many other tracts of the public lands of the United States, was withdrawn from mineral exploration and from any form whatsoever of location, settlement, selection, filing, entry, occupation, possession, purchase, or acquisition under the public-land laws, or any thereof; and the said order has never been retracted or set aside; but, on the contrary, the same now is, and at all times since the aforesaid date thereof, has continuously remained in full force and effect. A copy of the said order of withdrawal, omitting only the descriptions of lands not involved in this suit, is hereto attached and made a part of this bill.

By the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910 (36 Stat. L., 847, 848), it was and is provided as follows:

[5] Sec. 1. That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes, to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress.

3 Sec. 2. That all lands withdrawn under the provision of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; [6] but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

On July 2, 1910, there was made and promulgated, by and with the approval of the President, a certain order in writing, styled "Order of withdrawal, petroleum reserve, No. 8, whereby the said order of September 27, 1909, was expressly ratified, confirmed, and continued in full force and effect, and the tract of land hereinbefore described, along with many others belonging to the public domain, was declared to be withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, subject only to the provisions, limitations, exceptions, and conditions of the act of Congress above set forth. The said order

of July 2, 1910, now is, and ever since the said date thereof has continuously remained, in full force and effect. A copy thereof, omitting only the descriptions of lands not involved in this suit, is hereto attached and made part of this bill.

V.

On March 27, 1910, William G. Henshaw, Hetty T. Henshaw, Tyler Henshaw, William M. Fitzhugh, Mary E. Fitzhugh, Harry Chickering, Alla S. Chickering, and Henry D. [7] Nichols (who, for brevity, will hereafter be referred to collectively and intended by the term "original claimants"), in defiance of the first aforesaid order of withdrawal and in violation of the proprietary rights of the plaintiff, unlawfully entered and trespassed upon the said described land, and then and there unlawfully, and without any license or authority from the plaintiff, commenced to drill a well for the purpose of exploring the said land and premises for petroleum, and thereafter the said unlawful drilling operations were there continued by the said original claimants until they had caused the said well to be sunk to a great depth and had therein encountered and thereby rendered subject to ready extraction large deposits of petroleum of great commercial value within the said described parcel of land.

Prior to March 27, 1910, neither the said original claimants, nor any of them, nor the defendants above named, nor any of them, nor any other person or persons whomsoever, had ever explored the said described land, or any part of it, for the purpose of discovering petroleum, gas, or any other mineral or minerals whatsoever, or had ever undertaken or caused to be commenced or performed work of any kind for the purpose of any such exploration, or had ever occupied or claimed the said described land, in whole or in part, as petroleum land or otherwise; nor was any actual discovery of petroleum or of any other mineral ever made within the limits of the said described land until subsequent to March 27, 1910, and on, to wit, May 5, 1910, on which last-mentioned date plaintiff avers, on information and belief, the deposits of petroleum were encountered, as aforesaid, within and by means of the said well.

VI.

On May 4, 1910, the said original claimants caused to be filed for record and recorded, in the records of the said county of Natrona, a certain writing bearing date March 10, [8] 1910, purporting to be signed in their respective names, and purporting to be a location certificate evidencing a claim and location by them of the said described land as petroleum placer-mining claim under and in pursuance of the mining laws of the United States.

VII.

Plaintiff is informed by the defendants and therefore alleges that at some time or times subsequent to July 2, 1910 (when the second of the said orders of withdrawal was made as aforesaid), the said

original claimants, through divers written instruments by them made and delivered, assigned and transferred all such right, title, or interest as they or any of them ever had or claimed in or to the said described land, by virtue of the said pretended location or otherwise, to certain of the defendants; and for this reason the plaintiff has not joined the said original claimants as parties defendant in this cause. The plaintiff, however, expressly reserves its right to join the said original claimants as parties defendant hereto, in case it should hereafter be made to appear that they, or any of them, still claim an interest in the subject matter of this suit, or are or have been responsible for any of the wrongs, injuries, and conversions hereinafter mentioned; and it hereby disclaims any purpose or intention whatsoever to waive any cause of action which it may have against them, or any of them, at law or in equity, or any right to pursue the same either in this jurisdiction or within the State of California, where, it is informed, the said original claimants reside.

The plaintiff is not sufficiently informed concerning the nature or purport of the said written instruments, or any of them, to describe the same more fully than as above set forth, but alleges that the said instruments are in the possession of the defendants, and are subject to be fully disclosed by them in this suit.

VIII.

[9] Each of the defendants claims to have some interest in the said described land and in the petroleum therein contained or derived therefrom; but their said claims are all wholly based upon and derived from the aforesaid pretended location and instruments made and delivered by the original claimants as aforesaid, purporting to transfer and assign rights in the said land pretended by them to have been acquired by virtue of the said pretended location and by the drilling of the said well; and the plaintiff avers that the said pretended location was and is violative of the said orders of withdrawal and the act of Congress above set forth, and was and is absolutely null and void, and that neither the original claimants, nor any of them, nor the defendants, nor any of them, now has, or ever acquired, any right, title, or interest in the said described land, or any part of it, or any right to extract petroleum from the same or any part of it; and that all and singular the claims of the defendants in the premises are illegal and of no force or effect whatsoever against the plaintiff.

6 The plaintiff is not sufficiently informed on the subject to define further the several and respective claims and pretenses of the defendants, but seeks in this suit a full discovery thereof.

IX.

In the month of October, 1911, the defendant, The Reed Investment Company, acting by and with the consent and at the instigation

of the other defendants, wrongfully and unlawfully took possession of the said described land and of the said oil well, and ever since so taking possession the said last-named defendant has been continuously operating the said oil well, without the plaintiff's consent, and has thus extracted from the said land large quantities of petroleum, to wit, more than fifty thousand barrels thereof, of a value of more than one dollar per barrel.

Plaintiff alleges, upon information and belief, that the oil so taken has been and is being in large part refined by [10] the defendants, or some of them, and that all of the said oil has been and is being from time to time by them disposed of to divers persons to the plaintiff unknown, for large sums of money, and that the defendants have reaped and are continuing to reap large pecuniary profits from the aforesaid tortious taking of oil from the said described land, and the conversion thereof to their own use, as aforesaid.

X.

During the month of December, 1911, and at divers dates thereafter, this plaintiff made due demand upon the defendants and each of them that they and each of them vacate said land and surrender the possession thereof to this plaintiff and cease committing trespass and waste thereupon, and particularly as to the petroleum deposited therein; but notwithstanding the premises the defendants and each of them have at all times refused and still refuse to vacate said land or surrender the possession thereof to this plaintiff or to cease committing trespass and waste thereupon, and said defendants still continue, and threaten to, and unless restrained therefrom will continue, to extract petroleum from said land and appropriate the same to their own use and benefit, and otherwise commit trespass and waste upon said land, to the great and irreparable injury of this plaintiff.

XI.

The present value of the land hereinbefore described exceeds two hundred and fifty thousand dollars.

In consideration whereof, and for isasmuch as plaintiff is without full, adequate, and complete remedy in the premises, 7 save in a court of equity, and to the end that the said defendants, The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, and each of them, make full, true, and direct answer to all and singular the matters [11] and things herein set out, as fully as if they had been particularly interrogated thereunto, but not under oath (an answer under oath being hereby expressly waived); and to the end that said defendants and each of

them may be adjudged and decreed to have no estate, right, title, interest, or claim in or to said land or any part thereof or any of the minerals therein contained; and that said land and all thereof and all of the minerals contained may be adjudged and decreed to be the property of the plaintiff, free and clear of all claims asserted by the defendants, or any of them; and that each and all of the defendants, their officers, agents, servants, and attorneys, during the progress of this suit, and thereafter finally and perpetually may be enjoined from asserting or claiming any right, title, or interest in or to the said land or any part thereof or any of the minerals therein contained; and that each and all of the defendants, their officers, agents, servants, and attorneys, during the progress of this suit, and thereafter finally and perpetually, may be enjoined from going upon any of said land, and from in any manner using any of said land, and from in any manner removing or using any of the minerals deposited in said land or any part thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon said land or any part thereof, or with reference to any of the minerals deposited therein or any of the other natural products thereof; and that an accounting may be had by said defendants and each of them wherein said defendants and each of them shall make a full, complete, itemized, and correct disclosure of the quantity of petroleum, or other natural products, removed or extracted by them or either or any of them from said land or any part thereof, and of any and all moneys or other property, rents, and profits received by them or either or any of them from the use or sale of petroleum or other products taken from said land or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in the premises; and that plaintiff may have such other and further relief as in equity may seem proper.

May it please the court to grant unto the plaintiff a writ of subpoena issued by and under the seal of this honorable court, directed to said The Midwest Oil Company, The Reed Investment Company,

8 The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, thereby commanding them and

each of them, at a certain time and under a certain penalty therein to be limited, to appear before this honorable court, and then and there full, true, and direct answer make to all and singular the premises, and stand to, perform, and abide by such order, direction, and decree as may be made against them or any of them in the premises and as shall be meet and agreeable to equity.

HILLIARD S. RIDGELY,

United States Attorney.

B. D. TOWNSEND,

Special Assistant to the Attorney General.

[13] Department of the Interior.

United States Geological Survey.

Washington

101960

CAH

Oct. 5/09 to R. & R. Visalia,
Oakland, Sacramento & Los
Angeles, & Buffalo & Doug-
las, Wyo.

Office of the director.
Received Glo
Sep. 28, 1909.

September 27, 1909.

The honorable,

The Secretary of the Interior.

Sir:

In accordance with your orders I have the honor to submit the following recommendation, which covers approximately 3,041,000 acres, of which the larger part is probably private land and not affected by this withdrawal.

Temporary petroleum withdrawal No. 5.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

9

Wyoming.

(Sixth principal meridian.)

T. 39 N., R. 79 W.

Very respectfully,

H. C. RIZER,
Acting Director.

Approved September 27, 1909, and sent to General Land Office.

FRANK PIERCE,
Acting Secretary,
E. S. F.

[14] Department of the Interior,
62443

United States Geological Survey, Received G. L. O. Jul. 9, 1910.
Washington.

Office of the director.

July 1, 1910.
Ex. Order of Modification 8,
22/11
See Douglas 05428

Right of way Natrona Pipe Line, etc., Co. W. P. W.

The honorable,

The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Wyoming, involving approximately 255,461 acres:

Order of withdrawal.

Petroleum reserve No. 8.

It is hereby ordered that those certain orders of withdrawal made heretofore:

On Sept. 27, 1909, and described as temporary petroleum withdrawal No. 5;

On Oct. 12, 1909, and described as temporary petroleum withdrawal No. 6;

10 On Oct. 12, 1909, and described as temporary petroleum withdrawal No. 7;

On Oct. 30, 1909, and described as temporary petroleum withdrawal No. 8;

On Feb. 12, 1910, and described as temporary petroleum withdrawal No. 13;

On April 8, 1910, and described as temporary petroleum withdrawal No. 14;

On June 18, 1910, and described as temporary petroleum withdrawal No. 17;

in so far as the same include any of the lands hereinafter described, be, and the same are hereby, ratified, confirmed, and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910, there is hereby withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation

affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to wit:

[15] (Sixth principal meridian, Wyoming.)

T. 39 N., R. 79 W., secs. 11, 12, and 13.

Very respectfully,

GEO. OTIS SMITH,
Director.

July 1, 1910.

Respectfully referred to the President with recommendation that same be approved.

R. A. BALLINGER,
Secretary.

Approved July 2, 1910,
and referred to the Secretary of the Interior.

WM. H. TAFT,
President.

11 Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,
Acting Secretary.
DMC

Endorsed: Filed in the District Court on Febry. 14, 1913.

[16] (Praeipe for Subpoena for the Defendant the Midwest Oil Co.)

The clerk will issue a subpoena in equity in the above-entitled cause, for service upon the Midwest Oil Company, a corporation organized under the laws of the State of Arizona, and the Fitzhugh Oil Company, a corporation organized and existing under the laws of the State of Arizona, returnable twenty days from the issuing thereof.

HILLIARD S. RIDGELY,
Attorney for Plaintiff.

To CHARLES J. OHNHAUS, *Clerk.*
Cheyenne, Wyoming, Feb. 14th, 1913.

Filed in the District Court on Feb. 14, 1913.

[17] (Praeipe for Subpoena for the Defendants the Reed Investment Co., et al.)

The clerk will issue a subpoena in equity in the above-entitled cause, for service upon the Reed Investment Company, a corporation organized and existing under the laws of the State of Colorado,

and O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, residents of the State of Colorado, returnable twenty days from the issuing thereof.

HILLIARD S. RIDGELY,
Attorney for Plaintiff.

To CHARLES J. OHNHAUS, *Clerk.*
Cheyenne, Wyoming, Feb. 14th, 1913.

Filed in the District Court on Feb. 14, 1913.

[18] Subpoena in Chancery.

UNITED STATES OF AMERICA, *District of Wyoming, ss:*

In the District Court of the United States for the District of Wyoming, sitting at Cheyenne.

12 The President of the United States of America: To the Midwest Oil Company, the Reed Investment Company, the Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, greeting:

You and each of you are hereby commanded, that you appear before the judge of the District Court of the United States, for the District of Wyoming, at the city of Cheyenne, in said district, twenty days from the date hereof, to answer the bill of complaint of the United States of America, this day filed in the office of the clerk of said court, in said city of Cheyenne, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Wyoming to execute and make due return.

Witness, the Honorable John A. Riner, judge of the District Court of the United States, for the District of Wyoming, and the seal of the said district court, at the city of Cheyenne, aforesaid, this fourteenth day of February, in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States, the 136th year.

[SEAL.]

CHARLES J. OHNHAUS,
Clerk.

[19] Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall file their answer or other defense in the office of the clerk of said court, at the city of Cheyenne, aforesaid, on or before the twentieth day after service, excluding the day thereof the bill of complaint may be taken pro confesso.

CHARLES J. OHNHAUS,
Clerk.

UNITED STATES OF AMERICA, *District of Wyoming*, ss:

I certify that I served the attached subpoena on the within named the Midwest Oil Company by delivering a true copy thereof to John B. Barnes, jr., designated agent for service of said company, personally at Casper, county of Natrona, State and district of Wyoming, on the 15th day of February, 1913.

I served said subpoena on the within named, the Fitzhugh Oil Company by delivering a true copy thereof to John B. Barnes, jr., designated agent for service of said company, personally, at Casper, county of Natrona, State and district of Wyoming, on the 15th day of February, 1913.

The within-named The Reed Investment Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, could not be found within the district of Wyoming, and were not served.

Witness my hand at Cheyenne, Wyoming, this 19th day of February, 1913.

HUGH L. PATTON,
United States Marshal.

Fees.

Service, 2 @ \$4-----\$ 8.00

Mileage, 221 @ 12c----- 26.52

\$34.52

[20] Endorsed: Filed in the District Court on Feb. 19, 1913.

[21] (Affidavit of J. H. Favorite for the United States.)

STATE AND DISTRICT OF WYOMING, ss:

J. H. Favorite, being first duly sworn, deposes and says:

I am, and for more than two years last past have been, a special agent of the General Land Office of the United States, assigned to duty in the district or division which includes the State of Wyoming. During said time I have worked under the direction of A. Baker, the chief of said district or division. My duties as such special agent have related to field examinations on behalf of the Department of the Interior with reference to the administration of the public-land laws of the United States and the enforcement and protection of the proprietary and other rights of the United States in the public lands, including these growing out of trespasses and waste committed upon any of the public lands. Under the direction of said A. Baker, chief of said district or division, I personally investigated the transaction referred to in the bill [22] of complaint filed in the above-entitled cause, and in this manner acquired personal knowledge thereof. I swear that the statements made in the bill of complaint filed in the above-entitled cause are true of my own personal knowledge, except as to such statements as are made upon information and belief, all of which I verily believe to be true. My knowledge of these facts upon which the prayer in said bill for temporary relief

14 by injunction is based was obtained from a personal inspection of the records of the United States Land Office, the records of the county of Natrona, Wyoming, a personal inspection and obser~~action~~ of the land described in said bill of complaint, and operations conducted by the defendants upon said land, and from admissions and statements made to me by the defendants and their duly authorized officers and agents.

J. H. FAVORITE.

Subscribed and sworn to before me this 25th day of February, A. D. 1913.

[SEAL.]

CHARLES J. OHNHAUS,
*Clerk United States District Court
for the District of Wyoming.*

Filed in the District Court on Febry. 25, 1913.

[23] (Motion for service upon nonresident defendants.)

Now comes the plaintiff in the above-entitled cause and shows to the court that personal service upon the defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z Reed, can not be obtained in this district, they being absent therefrom, and further, that this suit involves title to land lying within this district.

Wherefore plaintiff prays the court for an order directing service of a certified copy of the bill of complaint and of said order to be made upon said nonresident defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, in the State of Colorado, plaintiff being creditably informed that they are all to be found in that State.

W. E. MULLEN,
Asst. United States Attorney.

[24] UNITED STATES OF AMERICA, *District of Wyoming, ss:*

W. E. Mullen, being first duly sworn, upon his oath deposes and says: That he is assistant United States attorney for the district of Wyoming, and as such makes the foregoing motion on behalf of the plaintiff in the foregoing-entitled case; that he knows the contents of said motion and that the statements therein made are true as he verily believ's.

W. E. MULLEN.

15 Subscribed in my presence and sworn to before me this 1st day of March, A. D. 1913.

[SEAL.]

CHARLES J. OHNHAUS, *Clerk.*

Filed in the District Court on March 1, 1913.

[25] (Order for service upon nonresident defendants.)

Now on this day, the above-entitled cause coming on to be heard, upon the motion of the plaintiff, asking for an order of service out of

this district upon the defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, and it being shown to the court that service cannot be made upon said defendants within this district, and further, it being made to appear that this action involves the question of title to lands lying within this district, and that service can be made upon the said defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, in the State of Colorado.

It is therefore considered and ordered that said defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, be and they are required to appear, plead by motion or answer to said bill of complaint on or before the 7th day of April, [26] 1913, and that service be made upon the said defendants, The Reed Investment Company, a corporation, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, in the State of Colorado, by delivering to each of said defendants a certified copy of the bill of complaint in the above-entitled case, and of this order.

Dated, Cheyenne, Wyoming, March 1st, 1913.

JOHN A. RINER, *Judge.*

Endorsements: No. 733. In Equity. In the District Court of the United States for the District of Wyoming. United States of America vs. The Midwest Oil Co. et al. Order. Filed March 11, 1913. Charles J. Ohnhaus, Clerk.

UNITED STATES OF AMERICA, *District of Colorado, ss.*

DENVER, COLORADO, *March 11, 1913.*

I hereby certify and return that I received the within writ on the 7th day of March, A. D. 1913, and that I have personally served the same as follows, to wit:

16 As to the Reed Investment Company, by delivering to J. L. Warren, personally, as the secretary and treasurer of the said The Reed Investment Company, a true copy of the within writ, together with a certified copy of the bill of complaint herein, at Denver, in said district, on the 7th day of March, A. D. 1913.

As to A. M. Johnson, J. L. Warren, and V. Z. Reed by delivering a true copy of the within writ, together with a certified copy of the bill of complaint herein, to each of them, personally, at Denver, in said district, on the 7th day of March, A. D. 1913.

As to O. H. Shoup, by delivering to him, personally, a true copy of the within writ, together with a certified copy of the bill of complaint herein, at Denver, in said district, on the 10th day of March, A. D. 1913.

D. C. BAILEY,
U. S. Marshal.

By E. B. CHADWICK,
Deputy.

Fees & costs.
\$10.00

[27] (Motion for an order extending time to file answer.)

Comes now K. C. Schuyler, esquire, and Walter F. Schuyler, esquire, attorneys for the above-named defendants, and moves the court for an order extending the time to defendants until the 27th day of March, A. D. 1913, to file their answer or other defense to the bill of complaint of the plaintiff in said *cuase*; and as reasons therefor state:

1. Service of the subpoena which was issued in the above-entitled cause has been served only upon the Midwest Oil Company, the other dependants being nonresidents of the State of Wyoming.

2. That it is desired that all of the defendants appear and answer at the same time.

3. That these attorneys have not been able to confer with the defendants not served with process.

K. C. SCHUYLER,

WALTER F. SCHUYLER,

*Attorneys for Defendants The Midwest Oil Company
and The Reed Investment Company.*

[28] Filed in the District Court on March 4, 1913.

17

[29] (Order extending time to file answer.)

This day came the above-named defendants, by their attorneys, K. C. Schuyler, esquire, and Walter F. Schuyler, esquire, and presented to the court their motion for an extension of time for defendants to file answer or other defense to the bill of complaint in the above-entitled cause; and the same having been duly considered by the court, and the court being duly advised in the premises; and the plaintiff, the United States of America, being represented by H. S. Ridgely, esquire, United States attorney for the district of Wyoming, and he not objecting thereto, the said motion is hereby allowed, and said defendants and each of them are given time until the 27th of March, A. D. 1913, within which to file answer or other defense to the bill of complaint filed herein.

Done this 4th day of March, A. D. 1913.

JOHN A. RINER, *Judge.*

[30] Filed in the District Court on March 4, 1913.

[31] The joint and several motion of all of the above-named defendants to dismiss the bill of complaint of the plaintiff.

To the honorable District Court of the United States within and for the district of Wyoming:

Defendants The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed, both jointly and severally, hereby

move that the bill of complaint in the above-entitled suit, and the whole thereof, be dismissed for insufficiency of fact to constitute a valid cause of action in equity against the said defendants, or either of them, in this:

First. It appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed by the bill against the defendants or either or any of them.

Second. It appears by the plaintiff's own showing by [32] the said bill, and the law applicable thereto, that the so-called order of withdrawal alleged to have been made by the Secretary of the Interior on September 27, 1909, and entitled "Temporary petroleum withdrawal number 5" (and a copy of which order is attached to the bill) was made without authority of law, and, at the time it was made and promulgated, if it was in truth and in fact made
18 or promulgated as alleged in the bill, was and ever since has been wholly void and of no effect, and contrary to and in violation of the provisions of the Constitution and laws of the United States with respect of the control and disposition of the public lands of the United States, and particularly public lands containing deposits of petroleum or other minerals. By reason whereof, the plaintiff cannot have, and is not entitled to receive, any benefit or advantage from the said so-called withdrawal order of September 27th, 1909, its said bill and all relief prayed for thereby being conditioned and based exclusively upon the alleged validity and effect of said withdrawal order.

Third. It appears by the plaintiff's own showing by the said bill that the defendants or their grantors under whom they claim and have title and who are referred to in the bill as the "original claimants," entered upon the mineral land described therein, to wit, the northeast quarter of section eleven of township thirty-nine north of range seventy-nine west of the sixth principal meridian, on March 27, 1910, and commenced work for the purpose of exploration and for the discovery of petroleum thereon, and entered into the actual occupation of said land, then and there being a part of the public mineral domain of the United States open to occupation and exploration for the discovery of petroleum; and thereafter were continuously in the diligent prosecution of such work until [33] May 5th, 1910, on which date petroleum was encountered and discovered by them thereon in paying quantities.

It further appears from the plaintiff's bill that on the 2nd day of July, 1910, and at the time of the alleged making and promulgation of that certain order styled in the bill "Order of withdrawal, petroleum reserved, No. 8," the said land had been duly located and claimed, under the mineral-land laws of the United States, by the original claimants, and that said claimants were at said date in the actual occupation and possession thereof under such laws, and had theretofore made a valid and subsisting discovery of petroleum in said land. Therefore, under the laws of the United States, particularly those relating to the occupation, possession, and location of

mineral lands, such land was not, upon said 2nd day of July, 1910, subject to withdrawal under said order of July 2nd, 1910, nor were the vested rights of the original claimants, then subsisting therein, impaired or affected thereby. Further, by the express terms of the act of the Congress of the United States, approved June 25, 1910 (36 Stat. L., 847), set forth at large in the bill, and under whose exclusive authority said withdrawal order of July 2nd, 1910, was made or promulgated, if it was so made and promulgated, the said land was expressly removed and exempted from any such withdrawal.

19 It further appears from the bill that after July 2, 1910, but long prior to the commencement of this suit, the original claimants assigned, set over, and conveyed unto certain of the defendants all their right, claim, interest, and title to said land, initiated, acquired, and vested as aforesaid; and that the defendants, or some of them, are now, and were at the time of the commencement of this suit, entitled to and in the actual enjoyment of all of the rights and title of the original [34] claimants, and entitled to and in the occupation and possession of said lands, with the right to mine and extract the petroleum contained therein; and that all of the acts of the defendants, or either of them, complained of in the bill, have been done and are being done under and by virtue of the right, title, and interest acquired by their grantors, the original claimants, as aforesaid, prior to July 2, 1910.

JOEL F. VAILE,
HENRY McALLISTER, JR.,
WILLIAM N. VAILE,
WALTER F. SCHUYLER,
KARL C. SCHUYLER,
LEE CHAMPION,

*Solicitors for defendants, The Midwest Oil Company, The
Reed Investment Company, The Fitzhugh Oil Company,
O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed.*

Filed in the district court on March 26, 1913.

[35] Order setting hearing on motion to dismiss.

Monday, April 7, 1913.

This cause coming on now to be heard on the motion to dismiss the bill of complaint herein, Hilliard S. Ridgely, Esquire, appearing as solicitor for the complainant, and Ralph Hartzell, Esquire, appearing as solicitor for the respondents, it is ordered by the court that the hearing on said motion to dismiss be, and the same is hereby, set for Thursday, May first, A. D. 1913, at ten o'clock in the forenoon.

[36] (Order, April 17, 1913, resetting hearing on motion to dismiss.)

This cause coming on now to be heard, upon the application of the parties hereto, for a continuance of hearing heretofore set for

20 Thursday, May first, A. D. 1913, it is now ordered by the court that the order heretofore entered setting this case for hearing on Thursday, May first, 1913, be, and the same is hereby, set aside, and the hearing is now set for Wednesday, May seventh, A. D. 1913, at ten o'clock in the forenoon.

[37] (Motion to dismiss argued and continued.)

This cause coming on now to be heard on the motion to dismiss the bill of complaint, Ernest Knaebel, Esq., Assistant Attorney General of the United States, H. S. Ridgely, Esquire, United States attorney for the district of Wyoming, and William E. Mullen, Esquire, assistant United States attorney for the district of Wyoming, appearing as solicitors for the complainant, and Joel F. Vaile, Esquire, Henry McAllister, jr., and Karl C. Schuyler, Esquire, appearing as solicitors for the respondents, is argued by counsel to the hour of adjournment.

It is ordered by the court further hearing of this case be, and the same is hereby, continued to Thursday, May 8th, 1913, at ten o'clock in the forenoon.

JOHN A. RINER, *Judge.*

Filed in the district court on May 7, 1913.

[38] (Motion to dismiss argued and taken under advisement.)

This cause coming on now to be heard on the motion to dismiss the bill of complaint, Ernest Knaebel, Esquire, Assistant Attorney General of the United States, H. S. Ridgely, Esquire, United States attorney for the district of Wyoming, and William E. Mullen, Esquire, assistant United States attorney for the district of Wyoming, appearing as solicitors for the complainant, and Joel F. Vaile, Esquire, Henry McAllister, jr., and Karl C. Schuyler, Esquire, appearing as solicitors for the respondents, is argued by counsel and by the court taken under advisement.

It is ordered by the court that the complainant have twenty days from and after this date within which to file its brief, and the respondents five days thereafter within which to file their briefs.

JOHN A. RINER, *Judge.*

[39] Filed in the district court on May 18, 1913.

21 [40] (Certified copy of telegram, Ballinger to Acting Secretary Pierce, Interior Department, Sept. 26, 1909.)

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 19, 1913.

I, Franklin K. Lane, Secretary of the Interior, hereby certify that the annexed paper is a true and correct copy of the original as it appears on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.]

FRANKLIN K. LANE,
Secretary of the Interior.

[41] Form 168.

File Finney.

The Western Union Telegraph Company,
Incorporated.

Pierce.

24,000 offices in America.

Cable service to all the world.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeatd messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

This is an unrepeatd message and is delivered by request of the sender, under the conditions named above.

ROBERT C. CLOWRY,
President and General Manager.

Received at Wyatt Building, cor. 14th & F Streets, Washington,
D. C.

Telephones: M 4106, M 2114, and M 1707.

22 54 CH. IS. 42 Collect Govt.

Dept. of the Interior
Received

K. Salt-Lake, Utah, Sept. 26th, 1909.

Sept. 27, 1909

Secy's Office

Division of Mails and
Files.

Acting Secretary. Pierce, Interior. Dept ----- Washington,
D. C.

Have conferred with President respecting temporary withdrawals covering oil lands if present withdrawals permit mining entries being made of such lands wish the withdrawals modified at once to prohibit such disposition pending legislation.

BALLINGER.

148 P. M.

Always open. Money transferred by telegraph. Cable office.
Endorsed: Filed in the district court on June 9, 1913.

[42] (Certified copy of telegram, Frank Pierce. Acting Secretary, to Secretary of Interior Sept. 27, 1909.)

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 19, 1913.

I, Franklin K. Lane, Secretary of the Interior, hereby certify that the annexed paper is a true and correct copy of the original as it appears on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.]

FRANKLIN K. LANE,
Secretary of the Interior.

23

[43] 1-080 b. Charge G. R.

(Telegram)

DEPARTMENT OF THE INTERIOR,
Setember 27, 1909.

Hon. R. A. BALLINGER,
Secretary of the Interior,
Care President's Special, Helena, Montana:

Telegram twenty-sixth received. California and Wyoming petroleum withdrawals heretofore made permit mining locations. Following your direction I have temporarily withdrawn from all forms of location and entry two million eight hundred seventy-one thousand acres in California and one hundred and seventy thousand acres in Wyoming, all heretofore withdrawn for classification. My withdrawal prevents all forms of acquisition in future and holds the land in statu quo pending legislation.

FRANK PIERCE,
Acting Secretary.
Ecf Ep.

Filed in the District Court on June 9, 1913.

[44] (Certified copy of communication, H. C. Rizer, acting director, to the Secretary of the Interior, Sept. 27, 1909.)

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 19, 1913.

I, Franklin K. Lane, Secretary of the Interior, hereby certify that the annexed paper is a true and correct excerpt copy of so much of the original as appears on file in this department as relates to the withdrawal of land in township 39 north, or range 79 west, of the 6th principal meridian in the State of Wyoming.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.]

FRANKLIN K. LANE,
Secretary of the Interior.

[45] SEPTEMBER 25, 1909.

24

The honorable, the SECRETARY OF THE INTERIOR.

SIR: In accordance with your orders I have the honor to submit the following recommendation, which covers approximately 3,041,000 acres, of which the larger part is probably private land and not affected by this withdrawal.

Temporary petroleum withdrawal No. 5.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner, after field investigation and examination.

Wyoming
(Sixth principal meridian)
T. 39 N. R. 79 W.

Very respectfully,

(Sig)

H. C. RIZER,
Acting Director.

Approved September 27, 1909, and sent to General Land Office.

FRANK PIERCE,
Acting Secretary.
ECF.

[46] Filed in the District Court on June 9, 1913.

[47] (Decree.)

In the District Court of the United States for the District of
Wyoming.

The United States of America, plaintiff.
No. 733. vs. In Equity.
The Midwest Oil Company, et al., defendants.

This cause came on to be heard at this term on the bill of complaint and the motion to dismiss the same and was argued by counsel; and thereupon upon consideration thereof it is ordered, adjudged, and decreed by the court that the said motion to

- 25 dismiss be, and the same is hereby, sustained, and the bill of complaint dismissed, to which order and decree of the court the plaintiff, by counsel, then and there excepted.

JOHN A. RINER,

Judge.

Filed in the District Court on June 14, 1913.

[48] (Petition on appeal.)

The above named complainant, considering itself aggrieved by the final decision of this cause made and entered on the fourteenth day of June, A. D. 1913, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit from said decree, and it prays that this, its appeal, may be allowed, and that a transcript, duly authenticated, of the record of proceedings in the above entitled case upon which said decree was made, together with the accompanying assignment of errors, may be transmitted with this bill to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated Cheyenne, Wyoming, June 21, A. D. 1913.

HILLIARD S. RIDGELY,

United States Attorney for the District of Wyoming.

WILLIAM E. MULLEN,

*Assistant United States Attorney for the District of Wyoming,
Solicitors for Complainant, United States of America.*

[49] Filed in the District Court on June 21, 1913.

[50] (Order allowing appeal.)

This cause coming on to be heard upon the assignment of error and petition on appeal heretofore within the proper time filed herein by the complainant, United States of America, the petition for appeal aforesaid is allowed and such appeal granted.

Dated June 20, A. D. 1913.

JOHN A. RINER, *Judge.*

Filed in the District Court on June 21, 1913.

The complainant, United States of America, by Hilliard S. Ridgely, United States attorney for the district of Wyoming, and William E. Mullen, assistant United States attorney for the district of Wyoming, acting in pursuance of the express instructions of the Attorney General in that behalf given, files the following assignment of error upon which it will rely upon its appeal from the final decree made herein by this honorable court on the fourteenth day of June, A. D. 1913, saying that in the record and proceedings herein and in said final decree there is manifest error, and for error the complainant assigns on the appeal the following:

I.

The court erred in rendering the decree sustaining the motion to dismiss and dismissing the bill of complaint.

In order that the foregoing assignment of error may [52] be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as is in accordance to law and the statutes of the United States in such cases made and provided. All of which is respectfully submitted.

HILLIARD S. RIDGELY,
United States Attorney for the District of Wyoming.

WILLIAM E. MULLEN,
Assistant United States Attorney for the District of Wyoming.
Solicitors for Complainant, United States of America.

Filed in the District Court on June 21, 1913.

[53] (Citation.)

United States of America to The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, sitting at Cheyenne, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the United States of America, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

[54] Witness the honorable John A. Riner, judge of the District Court of the United States for the District of Wyoming, this 21st day of June, A. D. 1913.

[Seal U. S. District Court,
District of Wyoming.]

JOHN A. RINER, *Judge.*

Due service accepted this 21st day of June, A. D. 1913.

JOEL F. VAILE,
HENRY McALLISTER, JR.,
WILLIAM N. VAILE,
W. F. SCHUYLER,
K. C. SCHUYLER,
Solicitors for Defendants.

Filed in the District Court on June 21, 1913.

[55] (Praeipe for transcript.)

The clerk will prepare a transcript in the above-entitled cause, consisting of the following papers, orders, and files, to be transmitted to the Circuit Court of Appeals:

- Bill of complaint,
- Praeipe for subpoena in chancery for two certain defendants,
- Praeipe for subpoena in chancery for five certain defendants.
- Subpoena in chancery,
- Affidavit of J. H. Favorite for U. S.,
- Motion for service out of district,
- Order for service out of district,
- Motion for extension of time to answer,
- Order extending time to answer,
- Motion to dismiss bill,
- Order setting hearing on motion to dismiss,
- Order resetting hearing on motion to dismiss,
- 28 Motion to dismiss argued and taken under advisement,
- 3 certified copies of telegrams from Secretary of Interior,
- Judge's memorandum,
- Decree sustaining motion to dismiss,
- [56] Petition on appeal,
- Order allowing appeal,
- Assignment of error,
- Citation,
- Praeipe for transcript.

HILLIARD S. RIDGELY,
United States Attorney for the District of Wyoming.

WILLIAM E. MULLEN,
Assistant United States Attorney for the District of Wyoming.
Solicitors for Complainant, United States of America.

TO CHARLES J. OHNHAUS, *Clerk,*
Cheyenne, Wyoming, June 21, 1913.

Filed in the District Court on June 21, 1913.

[57] (Clerk's certificate to transcript.)

UNITED STATES OF AMERICA, *District of Wyoming, ss:*

I, Charles J. Ohnhaus, clerk of the District Court of the United States for the District of Wyoming, do hereby certify the above and foregoing pages (1) to (----), both inclusive, to be a true, correct, and complete transcript and copy of the record and proceedings, and of all thereof, as directed by praeipe for transcript, in a certain cause lately in said court pending, wherein United States of America is complainant, and The Midwest Oil Company, The Reed Investment Company, The Fitzhugh Oil Company, O. H.

29 Shoup, A. M. Johnson, J. L. Warren, and V. Z. Reed are respondents, as full and complete as the same still remains on file and of record in my office at Cheyenne.

In testimony to the above, I do hereto sign my name and affix the seal of said court, at Cheyenne, in said district, this 21st day of June, A. D. 1913.

[Seal U. S. District Court, District of Wyoming.]

CHARLES J. OHNHAUS,

Clerk of U. S. District Court, District of Wyoming.

Filed Jun. 28, 1913. John D. Jordan, Clerk.

[58] (Memorandum opinion of district court.)

Judge's memorandum.

The bill of complaint in this case seeks to have declared void the claim of title asserted by the defendants to certain oil lands located in Natrona County, Wyoming, and described in the bill as the north-east quarter of section eleven, township nine north of range seventy west. The defendants have filed a motion to dismiss. The facts as disclosed by the bill may be briefly stated as follows: On the 27th of September, 1909, the Secretary of the Interior issued what is designated in the record as temporary petroleum withdrawal No. 5, which is in the following words: "In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws, all locations or claims existing and valid at this date may proceed to entry in the usual manner after field investigation and examination." Then follows a description of the lands in the States of California and Wyoming, which include the 160 acres involved in this suit. It is further stated in the bill that subsequent to the issuance of this withdrawal order, and on the 27th of March, 1910, the grantors of the defendants entered upon the land in controversy and sunk a well to a great depth and had therein encountered and thereby rendered subject to ready extraction large deposits of petroleum of great commercial value within the above described parcel of land. The bill shows that no work had been done by the grantors of the defendants, the original claimants, prior to the 27th of March, 1910, nor was there any discovery until after the latter date. The bill then states that on May 4, 1910, the original claimants caused to be filed for record and to be recorded in the records of Natrona County a location certificate bearing date March 10, 1910, evidencing a claim or location by them of the lands described in the bill as a petroleum placer mining claim, under and in pursuance of the mining laws of the United States. It then sets

30

forth that the property was transferred to the defendants and that the rights of the defendants are based solely upon a transfer and assignment of the rights in said lands acquired by the previous location and by the drilling of said well; that the location was violative of the order of withdrawal and of the act of Congress approved June 25, 1910. The bill then states that the defendant had extracted more than 50,000 barrels of oil of the value of \$1.00 per barrel; that a demand was made upon the defendants on December 19, 1911, to vacate the lands and surrender possession, which they refused to do; that the present value of the lands exceeds \$250,000.00. The bill closes with a prayer that the defendants be decreed to have no estate, right, title, or interest in or to the land or to the minerals therein and that the lands and minerals be adjudged to be the property of the plaintiff. It also prays for an injunction and accounting.

The sole question presented by the motion to dismiss is whether the Secretary of the Interior, even by the direction of the President, had the power, implied or otherwise, to withdraw these lands from entry in the absence of congressional legislation authorizing him to do so.

[60] Prior to the 25th of June, 1910, there was no statute expressly authorizing the Secretary of the Interior or the President to make withdrawals of public land of the class herein described and for the purposes named in the order of withdrawal from settlement, location, sale, or entry under the public land or mining laws of the United States. This being true, the question is narrowed to this: Did the Secretary of the Interior or the President, under the expressed or implied powers conferred upon them to administer the land laws and to make all needed rules and regulations with reference thereto, have the power to make the withdrawal order of September 27, 1909?

While the question resolves itself into a narrow one, it opened a broad field for discussion and was ably argued by counsel on both sides. It would be interesting indeed to notice at some length the propositions discussed by counsel in support of and against the existence of the power to promulgate this order and to review the authorities to which the court's attention was directed; but as the case will doubtless go to an appellate court (and the court indulges in the hope that it will) that seems unnecessary. It is quite sufficient

for the court here to say that it has devoted itself to a careful and painstaking examination of every authority called to its attention by counsel, both at the oral argument and in the briefs, and that such examination and consideration has led to the conclusion that the power did not exist in the absence of congressional legislation authorizing it.

A decree will be entered sustaining the motion and dismissing the bill, with an exception allowed to the plaintiff.

Endorsed: Filed in the district court on June 14, 1913.

Filed Jun. 28, 1913. John D. Jordan, Clerk.

- 32 (Appearance of Messrs. Hilliard S. Ridgely and W. E. Mullen
as counsel for the appellant.)

United States Circuit Court of Appeals,

Eighth Circuit.

No. 3996.

United States of America, appellant,

vs.

The Midwest Oil Company, The Reed Investment Company, The
Fitzhugh Oil Company, O. H. Shoup, A. M. Johnson, J. L. War-
ren, and V. Z. Reed.

The clerk will enter my appearance as counsel for the appellant.

HILLIARD S. RIDGELY,
U. S. Atty., Cheyenne, Wyo.

W. E. MULLEN,
Asst. U. S. Atty.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Jul. 2, 1913.

(Appearance of Mr. Ernest Knaebel as counsel for the appellant.)

The clerk will enter my appearance as counsel for the appellant.

ERNEST KNAEBEL,
Assistant Attorney General.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Aug. 9, 1913.

- 33 (Appearance of Messrs. Vaile, McAllister & Vaile as counsel
for the appellees.)

The clerk will enter my appearance as counsel for the appellees.

JOEL F. VAILE.
HENRY MCALLISTER, Jr.
WILLIAM N. VAILE.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Aug. 9, 1913.

(Appearance of Messrs. Schuyler & Schuyler as counsel for the
appellees.)

The clerk will enter my appearance as counsel for the appellees.

KARL C. SCHUYLER,
WALTER F. SCHUYLER,
*1237 First National Bank Bldg.,
Denver, Colo.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals Aug. 11,
1913.

(Order of submission.)

SEPTEMBER TERM, 1913,
Tuesday, September 30, 1913.

In the above cause the court after an inspection of the record and briefs announced that, owing to the importance and great public interest involved, certain questions would be certified to the Supreme Court of the United States for the opinion of that court; this cause was thereupon taken by the court as submitted, without oral argument, upon the transcript of record from said district court, and the briefs of counsel filed herein.

34 (Order to file and record certificate of questions to Supreme Court of the United States.)

United States Circuit Court of Appeals, Eighth Circuit. September term, 1913.

WEDNESDAY, *October 8, 1913.*

United States of America, appellant.	} No. 3996.
vs.	
The Midwest Oil Company et al.	

Appeal from the District Court of the United States for the District of Wyoming.

In the above entitled cause certain questions having arisen on the record upon which this court desires the instruction of the Supreme Court of the United States as provided by law, and a certificate of such questions having been prepared and duly signed, it is now here ordered by this court that such certificate be filed and entered of record in this court and that the original of said certificate be duly certified by the clerk of this court, and that it be by him duly transmitted to the Supreme Court of the United States for its action thereon.

Said certificate being in words and figures as follows, viz:

(Memorandum of clerk: In accordance with the above order, the original certificate of questions was filed and recorded and transmitted to the Supreme Court of the United States, and for that reason a copy of same is not again included in this transcript.)

35 (Clerk's certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Wyoming as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true.

and complete copies of all the pleadings, record entries, and proceedings, except the certificate of the questions of said Circuit Court of Appeals to the Supreme Court of the United States and the full captions, titles, and endorsements, which captions, titles, and endorsements are omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said court wherein United States of America is appellant and The Midwest Oil Company et al. are appellees, No. 3996, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the city of St. Louis, Missouri, this thirtieth day of October, A. D. 1913.

[SEAL.]

JOHN D. JORDAN,

*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

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Supreme Court of the United States.

No. 750, October term, 1913.

The United States

vs.

The Midwest Oil Company et al.

On consideration of the motion that the whole record and this cause may be sent up to this court for its consideration,

It is now here ordered by the court that said motion be, and the same is hereby, granted, and that the transcript of record presented with the motion be taken as a return to this order.

NOVEMBER 10, 1913.

(Indorsed :) File No. 23901. Supreme Court of the United States. October term, 1913. Term No. 750. Order granting motion to bring up whole record, etc. Filed November 10, 1913.

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